

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**COMMERCIAL ALLOYS
CORPORATION AND COMMERCIAL
ALLOY SALES, LTD, LLC¹**

A Single Employer

and

Case No. 8-UC-355

**TEAMSTERS LOCAL UNION NO. 422
A/W INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

Petitioner-Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board, hereinafter referred to as the Board, has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:²

1. The Employers³ are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner-Union is a labor organization within the meaning of the Act and claims to represent certain employees of the Employers.

¹ The name of the Employer has been amended based on my determination that the two entities constitute a single employer.

² The Petitioner-Union and the Employer filed briefs that have been duly considered.

Commercial Alloys Corporation (CAC), an Ohio corporation in existence since 1983, is engaged in aluminum recycling at its facility located at 1831 East Highland, Twinsburg, Ohio. Its production and maintenance employees, specifically general shop helpers and sorters, loaders, towmotors and yard truck men, maintenance men, bailers and mechanics, have been represented by the Petitioner-Union for a number of years. There are approximately 33 employees in this bargaining unit. The most recent contract between the parties is effective by its terms from January 1, 2000 to December 31, 2002. The other employer involved in this matter, Commercial Alloys Sales Limited (CAS) is also currently located at the same facility. CAS was also formed approximately in 1983. In 2001, it acquired the assets of a Cleveland company called Aluminum Shredding Sales. In August 2001, CAS moved that operation to the Twinsburg facility occupied by CAC.⁴ CAS operators and maintenance personnel, approximately 14 in number, are not represented by any labor organization.

The Petitioner-Union raises two issues in this matter. First, it claims that the two employers, CAC and CAS, constitute a single employer. Second, it asserts that the CAS production and maintenance employees are an accretion to the existing CAC unit and that I should find the two groups constitute a single bargaining unit. The Employers deny that the two corporations constitute a single employer and contends that regardless of the single employer issue, the CAS employees do not constitute an accretion to the existing CAC unit.

The record reveals that Larry and Anthony Mussara own both CAC and CAS in equal shares.⁵ The Mussaras purchased CAC and CAS, as well as Victor Trucking and another company, M&M Drying Limited, from their stepfather, Gerald Brown, sometime during 2001.

³ Herein, the Commercial Alloys Corporation and Commercial Alloy Sales will be referred to individually as CAC and CAS and at times collectively as the Employers.

⁴ The record does not disclose the nature of the business engaged in by CAS prior to 2001.

⁵ The record contains different spellings of this last name, but it appears that the above spelling is the correct one.

The current officers of CAC are the Mussaras and Ron Glazer. There is no clear evidence regarding the identity of the officers of CAS.

The general counsel for CAS, Tom Grist, provides legal services to both companies.⁶ These include the drafting of personnel policies for CAS and negotiating a collective bargaining agreement and processing grievances on behalf of CAC. Linda Ayla, the controller for CAC, and Leo Cala, another CAC employee, perform payroll and record keeping functions for both CAC and CAS. Both corporations maintain separate bank accounts and financial records and has its own workers compensation and unemployment compensation accounts. Office space at the Twinsburg facility is shared by CAS, CAC and the two other businesses owned by the Mussaras. The record does not indicate whether each company maintains separate clerical staffs. All four businesses utilize a common automated phone system.

Separate plant managers head CAC and CAS production operations; Shawn George at CAC and Tony Zola at CAS. Zola testified that he could and does hire and discipline using his own discretion. While George did not testify, the testimony of other witnesses indicates that he has similar authority over day-to-day operations at CAC. The only difference between the authority exercised by the two plant managers is that George apparently can only recommend applicants for employment to Larry Mussara, who routinely follows these recommendations. George is also responsible for environmental compliance throughout the entire facility. Zola and George consult with Larry Mussara on a daily basis. However, these consultations involve production, rather than personnel, issues. Chris Celzer serves as safety director for both operations. The record is not specific regarding which company he is employed by. The Petitioner claims that the two companies share a common web page for marketing purposes under the CAC name. However, Grist testified that this web site was created prior to the

acquisition of Aluminum Shredding by CAS and contains no reference to the operations CAS currently conducts at the facility.

The production and maintenance employees of CAC have worked at the Twinsburg facility since roughly 1983. As noted above, the CAS operation moved into this facility in August 2001 following the construction of an addition that more than doubled its size. The production area is divided into roughly equal halves, separated by a wall. There is one opening in this wall, approximately 20' wide and 12' high. Each area has a separate outside entrance. Until recently employees were free to use either entrance, but have now been instructed to use only the entrance into their work area. Each operation has its own time clock. All employees share restroom and lunchroom facilities and use the same large parking lot. The Employers claim this lunch room arrangement is only temporary until the CAS lunch area is no longer needed for material storage. There was also some testimony that the CAS employees do not regularly use the common lunch area. CAC employees work a day and afternoon shift, with 20 employees on day shift and the balance on afternoon. CAS employees also apparently work a two-shift operation.

The duties of the CAC employees involve unloading of scrap material from trucks, separating it based on content and then processing the material through a baling machine that compresses it into large squares or "bales". CAS, on the other hand, is engaged in processing aluminum scrap. This involves sorting scrap based on content and running the material through a shredding machine that changes and reduces the material in size and shape. The product that comes from the shredder is then mixed, based on content and consistency, to meet customer requirements and is stored in hoppers. The finished product is then bagged for delivery. The record indicates that the products produced by CAS are used exclusively by the steel industry,

⁶ The record is unclear if Grist holds a formal position with CAC.

while CAC supplies other industries. There is no overlap in customers between the two companies.

There is no evidence of any ongoing interchange of employees between the two operations. CAS supervisors Ken Lamonica and Mike Driscoll formerly held positions with CAC but had left to assume supervisory positions with CAS when its operations were still located in Cleveland. Another individual, Ken Lowery, left a bargaining unit position with CAC in June 2001 and assumed a towmotor operator position at Aluminum Shredding, a Cleveland operation that CAS acquired and then later moved to Twinsburg. Lowery is still employed with CAS in a similar capacity. The record does not indicate the circumstances under which these employment changes were accomplished. Other than the above, there is no evidence of any permanent or temporary employee transfers between the two companies.

With regard to working contact, the record establishes that two CAC maintenance men, Joe Napper and Joe Brown aid their CAS counterparts, Jim Natal and Jessie Wolfe, when assistance is needed on a particular project and vice versa. While Zola testified that Napper worked on the CAS side daily, there is no evidence how frequently the other three interact. A CAC employee, Rich Houston, is in charge of moving trailers to and from both CAC and CAS loading docks.

As noted, much of CAC's operation involves use of a baler and CAS's involves the use of shredding machines. CAS performs no baling and CAC no shredding. Both operations utilize towmotors and related equipment. CAS apparently uses one or more of the CAC towmotors on a regular basis and many of the mechanics' tools are shared. The record reflects a single incident on November 7 where a delivery of scrap was unloaded by CAS employees and then sorted by CAC employees. With this exception, each group of employees apparently performs its own

unloading, sorting and processing operations. Drivers employed by Victor Trucking Company handle delivery to and from customer locations for both CAC and CAS. Victor Trucking drivers are represented by the Petitioner-Union in a bargaining unit separate from the CAC unit. There are apparently mechanics that work on the trucks operated by Victor, but the record does not indicate by whom they are employed.

While there are some common skills employed by both groups, particularly in operating towmotors and related equipment, Zola and maintenance man Jim Natal testified without contradiction that CAS employees utilize skills not possessed by CAC employees. They attribute this difference to the need for CAS employees to be proficient in carrying out the identification and blending of different materials. Zola also noted that CAC employees are limited to one or two jobs while CAS employees have to be able to perform all or nearly all the functions involved in the latter's operations. Zola testified that not only does he seek a more skilled employee to begin with, but that his employees have to undergo a training process of 8 months to a year. No such lengthy training process exists for CAC employees, as attested to in the testimony of CAC employee Charles Muscatello. Reflecting these more stringent requirements, CAS employees are more highly compensated than their CAC counterparts. Both groups are hourly rated and are paid once a week. CAS and CAC employees work under different rules of conduct and enjoy different retirement, health insurance benefits and sick/personal days. CAS employees participate in an attendance bonus program that CAC does not offer. CAC employees adhere to a "point system" for attendance that does not apply to CAS employees. Each group of employees wears uniforms, but the uniforms are different ones.

A determination of whether two or more entities constitute a single employer requires an analysis of four criteria: (1) interrelation of operations; (2) common management; (3)-centralized

control of labor relations; and (4) common ownership or financial control. Of these criteria, the Board has stressed that the first three “are more critical than common ownership” and has placed “particular emphasis on whether control of labor relations is centralized.” **Gartner-Harf Co.**, 308 NLRB 531 (1992), **Hydrolines, Inc.**, 305 NLRB 416, 417 (1991). Applying these factors to this record, it is clear that CAC and CAS constitute a single employer. The same individuals, Larry and Anthony Mussara, hold both ownership and management. While performing somewhat different functions, both companies are involved in the processing of aluminum scrap at a single location. While the Employers argue that individual plant managers separately exercise labor relations authority, the record is clear that ultimate authority in this area lies with Larry Mussara and general counsel Tom Grist. In sum, I have concluded that the record evidence is sufficient to establish that these two entities constitute a single employer.

However, as the Employers correctly point out, a single employer finding is not determinative of the accretion issue in this matter. In **Peter Kiewit Sons’ Co.**, 231 NLRB 76 (1977), the Board noted that, notwithstanding a determination of single employer status, accretion would be found between two groups of employees only if warranted by the Board’s traditional community of interest standards. In a single employer situation, only where the employee group at issue has little or no separate identity and shares an overwhelming community of interest with the existing unit will an accretion be found. **Gitano Group, Inc.**, 308 NLRB 1172, 1174-1175 (1992). More recently, the Board has stated that it will be very restrictive in finding an accretion. **Ryder Integrated Logistics, Inc.**, 329 NLRB 1493 (1999).

Applying the traditional community of interest factors such as bargaining history, functional integration, differences in the types of work and skills of the employees, the extent of centralization of management and supervision, and the extent of interchange and interaction

between the two groups of employees, to these facts, it is clear that the employees of CAS do not possess such an overwhelming community of interest with those in the CAC bargaining unit so as to be considered an accretion to that unit. The first factor, bargaining history, is essentially neutral. The CAS operation came into existence following the effective date of the current CAC contract. Accordingly, it cannot be said that the parties contemplated the accretion issue during their negotiations.

As for the second and third factors - functional integration and difference in duties and skills of the employees - the evidence provides only limited support for the Petitioner's position. The Petitioner is correct when it points out that both companies are engaged in the processing of aluminum scrap and that there is some similarity in employees' duties. However, it is clear from the record that both the work processes involved and the skills of the employees differ between the two operations. Specifically, the record is clear that the product mixing and related functions regularly performed by CAS employees requires a degree of expertise different from that of the CAC unit employees. Further, and most significant, there is no functional overlap between the two operations or the customer bases they serve.

Regarding the extent of centralized management and supervision, the Board focuses on day-to-day, rather than ultimate, control in analyzing an accretion issue. **Silver Court Nursing Center, Inc., 313 NLRB 1141, 1144 (1994).** The record is clear from the testimony of CAS plant manager Zola that he is in complete daily control of hiring, firing, discipline and other aspects of supervision at CAS. The record is equally clear that the same is true of all meaningful aspects of the authority of CAC plant manger Sean George.

With respect to the interchange and contact between the two groups of employees, it is clear that some ongoing sharing of duties exists among the maintenance personnel of CAC and

CAS and that both operations utilize the services of a single yardman. However, the record is unclear as to the degree to which these individuals work on the “other side” of the facility and exactly what they do on these occasions. This is significant as the Board has noted that it is not determinative in accretion issues that employees from one entity perform their work on the premises of the other (**Silver Court, supra**), work on equipment owned by the other (**Towne Ford Sales, 270 NLRB 311(1984)**) or that employees of one entity carry out the work of employees of the other entity during emergency situations. **Hotel & Restaurant Employees Local 274 (Warrick Caterers), 282 NLRB 939 (1987)**.⁷ More telling, perhaps even determinative, would be evidence of ongoing significant interchange between the employees in the groups in question and the fact that they are commonly supervised. **Mercy Health Services, 311 NLRB 367 (1993), Nave, Inc., 306 NLRB 926 (1992)**. As evidenced by these two decisions (involving regular interchange of 50% or more employees of the two groups) and others where an accretion was found, the interchange must involve a significant number of the employees in question. In other cases where no accretion was found, the Board has deemed insignificant the number and frequency of interchange instances similar to that evidenced in the current record. **Safeway Stores, 276 NLRB 944 (1985)**.⁸ As observed in **Silver Court Nursing Center, at 1146**, there is a notable absence of any reported Board decisions where an accretion was found without substantial evidence of both common day-to-day supervision and significant, ongoing employee interchange, regardless of the evidence supporting the other community of interest factors. In sum, I can only conclude that the factors militating against an accretion finding outweigh those supporting a different decision.

⁷ In my view, the single instance of interaction between CAC and CAS employees on November 7 clearly represents an isolated, emergency situation.

Based on the foregoing, and the record as a whole, I shall order that the unit clarification petition be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by January 14, 2002.

Dated at Cleveland, Ohio, this 31st day of December 2001.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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⁸ I give little significance to the situation presented by employee Ken Lowery, since the record does not reflect how he came to be employed at the Aluminum Shredding location and whether he was an employee of Aluminum Shredding or CAS when left CAC in June 2001.